



SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-73741; File No. SR-NYSEArca-2014-30)

December 4, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Hull Tactical US ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On March 24, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of Hull Tactical US ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on April 11, 2014.³ On May 21, 2014, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On July 9, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁶ The Commission received one

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 71894 (Apr. 7, 2014), 79 FR 20273 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ Securities Exchange Act Release No. 72214 (May 21, 2014), 79 FR 30672 (May 28, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it would have sufficient time to consider the proposed rule change. Accordingly, the Commission designated July 10, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ Securities Exchange Act Release No. 72571 (July 9, 2014), 79 FR 41330 (July 15, 2014).

comment letter.⁷ On October 8, 2014, the Commission designated a longer period of time for Commission action on the proposed rule change.⁸ On October 23, 2014, the Exchange filed Amendment No. 1 to the proposal.⁹ This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Description of Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Exchange Traded Concepts Trust (“Trust”), a Delaware statutory trust. The Trust is registered with the Commission as an investment company.¹⁰ Exchange Traded Concepts, LLC will be the investment adviser (“Adviser”) to the

⁷ See Letter from Christopher S. Jones, Associate Professor, University of Southern California to Elizabeth M. Murphy, Secretary, Commission (Sept. 16, 2014) (“Jones Letter”).

⁸ See Securities Exchange Act Release No. 73320, 79 FR 61911 (Oct. 15, 2014) (designating December 5, 2014 as the date by which the Commission must either approve or disapprove the proposed rule change).

⁹ In Amendment No. 1, the Exchange clarified that the Sub-Adviser will utilize more than one proprietary, analytical investment model to make investment decisions for the Fund, that the Sub-Adviser’s determination whether to take certain long or short positions in S&P 500-related ETFs and S&P 500-related futures will depend on the investment signals delivered by the models and on the judgment of the Sub-Advisor, and that the Sub-Advisor may adjust the Fund’s long and short positions when necessary to take into account new market conditions as well as data from the models. Because Amendment No. 1 provides clarification to the proposed rule change and does not materially affect the substance of the proposed rule change or raise any unique or novel regulatory issues, Amendment No. 1 does not require notice and comment.

¹⁰ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). The Exchange states that on July 26, 2013, the Trust filed with the Commission a post-effective amendment to its registration statement on Form N-1A relating to the Fund (File Nos. 333-156529 and 811-22263) (“Registration Statement”). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No.30445 (Apr. 2, 2013) (File No. 812-13969) (“Exemptive Order”).

Fund. HTAA, LLC will be the sub-adviser to the Fund (“Sub-Adviser”).¹¹ SEI Investments Co. will serve as the administrator of the Fund (“Administrator”). JP Morgan Chase Bank N.A. will serve as the custodian, transfer agent and dividend disbursing agent of the Fund. SEI Investments Distribution Co. will serve as the distributor for the Trust.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including portfolio holdings and investment restrictions.¹²

General

The investment objective of the Fund will be to seek long-term capital appreciation. The Fund will be actively managed.

Under normal market conditions,¹³ the Fund will seek to achieve its investment objective by taking long and short positions¹⁴ in one or more exchange traded funds (“ETFs”)¹⁵ that seek

¹¹ The Exchange states that neither the Adviser nor the Sub-Adviser is, or is affiliated with, a broker-dealer. The Exchange states that, in the event (a) the Adviser or Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new manager, adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, the adviser or sub-adviser will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and that adviser or sub-adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

¹² The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value (“NAV”) calculation, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, supra notes 3 and 10, respectively.

¹³ The term “under normal market conditions” includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; and force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

to track the performance of the S&P 500 Index (each, an “S&P 500-related ETF”). The ETFs the Fund invests in all will be listed and traded in the U.S. on registered exchanges. Under normal market conditions, substantially all of the Fund’s assets will be invested in one or more S&P 500-related ETFs; ETFs that provide leveraged or inverse exposure to the S&P 500 Index; and, to seek the desired exposure to the S&P 500 Index, futures contracts. The Fund may also, as described below, invest in cash instruments.

The Sub-Adviser will utilize a proprietary, analytical investment model that examines current and historical market data to attempt to predict the performance of the S&P 500 Index. The model will deliver investment signals that the Sub-Adviser will use to make investment decisions for the Fund. Depending on the investment signal delivered by the model, the Sub-Adviser will take certain long or short positions in one or more S&P 500-related ETFs: (1) if the model indicates bull-market conditions, the Sub-Adviser will take long positions; or (2) if the model indicates bear-market conditions, the Sub-Adviser will take short positions. When the Fund takes long positions, it may maintain long exposure of up to 200% of net assets; exposure to short positions will be limited to no more than 100% of net assets. The Sub-Adviser will adjust the Fund’s long and short positions when necessary to take into account new data from the model that reflects changing market conditions. Positions may be adjusted as the model predictions fluctuate.

¹⁴ Short sales are transactions in which the Fund sells a security it does not own. To complete the transaction, the Fund must borrow or otherwise obtain the security to make delivery to the buyer. The Fund is then obligated to replace the security borrowed by purchasing the security at the market price at the time of replacement. The Fund may use repurchase agreements to satisfy delivery obligations in short sales transactions. The Fund may use up to 100% of its net assets to engage in short sales transactions and collateralize its open short positions.

¹⁵ ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depositary Receipts) and 8.600 (Managed Fund Shares).

The Fund will enter into futures contracts to seek the desired exposure to the S&P 500 Index.¹⁶ The Fund will limit its investment in futures contracts such that either (1) the aggregate net notional value of its futures investments will not exceed the value of the Fund's net assets, after taking into account unrealized profits and unrealized losses on the futures positions it has entered into; or (2) the aggregate initial margin and premiums required to establish positions in its futures investments will not exceed 5% of the Fund's net assets, after taking into account unrealized profits and unrealized losses on any such positions. The Fund will only enter into futures contracts traded on a national futures exchange regulated by the CFTC. The Fund will trade futures when the Sub-Adviser determines that doing so may provide an efficient means of seeking exposure to the S&P 500 Index that is complimentary to its investment in shares of one or more S&P 500-related ETFs.

In addition to investments in the S&P 500-related ETFs and futures contracts, the Fund may invest up to 10% of its total assets in leveraged ETFs or inverse ETFs that seek to deliver multiples, or the inverse, of the performance of the S&P 500 Index, respectively (collectively with S&P 500-related ETFs, "Underlying ETFs"). Such investments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies, and they will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or 3X) of any

¹⁶ To the extent the Fund enters into futures contracts or invests in underlying ETFs that invest in futures, options on futures or other instruments subject to regulation by the U.S. Commodity Futures Trading Commission ("CFTC"), it will do so in reliance upon and in accordance with CFTC Rule 4.5. The Exchange states that the Trust has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" in accordance with CFTC Rule 4.5. Therefore, neither the Trust nor any of its series is deemed to be a "commodity pool" or "commodity pool operator" under the Commodity Exchange Act ("CEA"), and they are not subject to registration or regulation as such under the CEA. In addition, neither the Adviser nor the Sub-Adviser is deemed to be a "commodity pool operator" or "commodity trading adviser" with respect to the advisory services it provides to the Fund.

securities market index. The inverse and leveraged ETFs held by the Fund may utilize leverage (i.e., borrowing) to acquire their underlying portfolio investments.¹⁷

The Fund may invest in Underlying ETFs that are primarily index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Fund also may invest in Underlying ETFs that are actively managed. The Underlying ETFs in which the Fund may invest may invest in equity securities. Equity securities consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock,¹⁸ investments in master limited partnerships (“MLPs”)¹⁹ and rights.²⁰

The Underlying ETFs in which the Fund may invest may engage in futures and options transactions. The Fund will only invest in Underlying ETFs that engage in futures contracts if such futures contracts are traded on a national futures exchange regulated by the CFTC.

Underlying ETFs in which the Fund may invest may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index, or instrument; or other risk management purposes. When an Underlying ETF purchases or sells a

¹⁷ The use of leverage may exaggerate changes in an ETF’s share price and the return on its investments. Inverse and leveraged ETFs are designed to achieve their objectives for a single day only.

¹⁸ Convertible securities are bonds, debentures, notes, preferred stocks, or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio.

¹⁹ MLPs are limited partnerships in which the ownership units are publicly traded. MLP units are registered with the Commission and are freely traded on a securities exchange or in the over-the-counter market.

²⁰ A right is a privilege granted to existing shareholders of a corporation to subscribe to shares of a new issue of common stock before it is issued. Rights normally have a short life of usually two to four weeks.

futures contract, or sells an option thereon, it is required to cover its position in order to limit leveraging and related risks.

The Underlying ETFs in which the Fund may invest may buy and sell index futures contracts with respect to any index that is traded on a recognized exchange or board of trade.

The Underlying ETFs in which the Fund may invest may purchase and write (sell) put and call options on indices and enter into related closing transactions.²¹ All such options written on indices or securities must be covered by the Underlying ETF.

An Underlying ETF in which the Fund may invest may trade put and call options on securities, securities indices, and currencies, as the Underlying ETF's investment adviser determines is appropriate in seeking the ETF's investment objective, and except as restricted by the Underlying ETF's investment limitations. An Underlying ETF may purchase put and call options on securities to protect against a decline in the market value of the securities in its portfolio or to anticipate an increase in the market value of securities that the Fund may seek to purchase in the future. An Underlying ETF may write covered call options on securities as a means of increasing the yield on its assets and as a means of providing limited protection against decreases in its market value. An Underlying ETF may purchase and write options on an exchange or over-the-counter.

The Underlying ETFs in which the Fund may invest may enter into swaps, including, but not limited to, total return swaps, index swaps, and interest rate swaps. An Underlying ETF may

²¹ A put option on a security gives the purchaser of the option the right to sell, and the writer of the option the obligation to buy, the underlying security. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security. Put and call options on indices are similar to options on securities except that options on an index give the holder the right to receive, upon exercise of the option, an amount of cash if the closing level of the underlying index is greater than (or less than, in the case of puts) the exercise price of the option.

utilize swaps in an attempt to gain exposure to the securities in a market without actually purchasing those securities, or to hedge a position.²² The Underlying ETFs in which the Fund may invest may enter into swaps to invest in a market without owning or taking physical custody of the underlying securities in circumstances in which direct investment is restricted for legal reasons or is otherwise impracticable.

During periods when the Fund's assets (or portion thereof) are not fully invested in one or more S&P 500-related ETFs or otherwise exposed to the S&P 500 Index, all or a portion of the Fund may be invested in cash instruments ("Cash Instruments"), which include U.S. Treasury obligations; cash and cash equivalents including commercial paper, certificates of deposit and bankers' acceptances; repurchase agreements;²³ shares of money market mutual funds; and high-quality, short-term debt instruments including, in addition to U.S. Treasury obligations, other U.S. government securities.²⁴

²² Forms of swaps include interest rate caps, under which, in return for a premium, one party agrees to make payments to the other to the extent that interest rates exceed a specified rate, or "cap"; interest rate floors, under which, in return for a premium, one party agrees to make payments to the other to the extent that interest rates fall below a specified level, or "floor"; and interest rate collars, under which a party sells a cap and purchases a floor or vice versa in an attempt to protect itself against interest rate movements exceeding given minimum or maximum levels.

²³ The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund will effect repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Advisor. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement.

²⁴ Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance. Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government, including, but not limited to, obligations of U.S. government agencies or instrumentalities such as the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Government National Mortgage Association ("Ginnie Mae"), the

Other Investments

In addition to the investments described above, the Fund may invest in other investments, as described below.

In the absence of normal market conditions,²⁵ the Fund may invest 100% of its assets, without limitation, in Cash Instruments. The Fund may be invested in this manner for extended periods, depending on the Sub-Adviser's assessment of market conditions.

In addition to the Underlying ETFs discussed above, which are primary investments of the Fund, the Fund will invest in money market mutual funds, to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof.

Restrictions on Investment

The Fund may not purchase or sell commodities or commodity contracts unless acquired as a result of ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts, but this shall not prevent the Fund from entering into futures contracts.

The Fund will not directly enter into swaps or engage in options transactions.

Federal Home Loan Banks, and other agencies or instrumentalities. Some obligations issued or guaranteed by U.S. government agencies and instrumentalities, including, for example, Ginnie Mae pass-through certificates, are supported by the full faith and credit of the U.S. Treasury. Other obligations issued by or guaranteed by federal agencies or instrumentalities, such as those securities issued by Fannie Mae, are supported by the discretionary authority of the U.S. government to purchase certain obligations of the federal agency or instrumentality, while other obligations issued by or guaranteed by federal agencies or instrumentalities, such as those of the Federal Home Loan Banks, are supported by the right of the issuer to borrow from the U.S. Treasury. The Fund may invest in U.S. Treasury zero-coupon bonds.

²⁵ See note 13, supra.

The Fund may not, with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies, or its instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer.

The Fund may not acquire more than 10% of the outstanding voting securities of any one issuer.

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or shares of investment companies.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including securities deemed illiquid by the Adviser or Sub-Adviser consistent with Commission guidance²⁶ and repurchase agreements that do not mature within seven days. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity, if through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

²⁶ In reaching liquidity decisions, the Adviser and Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

III. Summary of Comment Letter Received

The Commission received one comment letter supporting the Exchange's proposal.²⁷

The commenter states that tactical asset allocation strategies are beneficial to investors, may have positive effects on market stability, and should be encouraged both by investment advisors and regulators.²⁸ The commenter states his belief that there is nothing inherently risky about tactical asset allocation, especially for strategies limited to holding cash and a market index.²⁹

Furthermore, the commenter states that the managers of the Fund have allowed him to see the equity exposures that have arisen from their model since 2001, and based on this the commenter believes the Fund should be "noticeably less risky than a standard equity index fund."³⁰

IV. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act³¹ and the rules and regulations thereunder applicable to a national securities exchange.³² In particular, the Commission finds that the

²⁷ See Jones Letter, supra note 7.

²⁸ Id. at 2. The commenter states that maintaining constant exposures to different asset classes is suboptimal, that investors can reap greater long-term rewards without increasing risk by increasing exposure to an asset class when its future returns are predicted to be above average and by trimming or shorting an asset class when its future returns are predicted to be poor, and that there is strong evidence from the finance literature that these tactical asset allocation strategies have significant value to investors who use them. Id. at 1.

²⁹ Id. at 2.

³⁰ Id.

³¹ 15 U.S.C. 78f.

³² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposal, as modified by Amendment No. 1., is consistent with Section 6(b)(5) of the Act,³³ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,³⁴ which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

The Commission notes that the Exchange has represented that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Commission also notes that, in support of this proposal, the Exchange has made the following representations:

- (1) The Shares will be subject to Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG") and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

- (4) The ETFs the Fund invests in all will be listed and traded in the U.S. on registered exchanges. The Fund will only enter into futures contracts traded on a national futures exchange regulated by the CFTC.
- (5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is

disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

- (6) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act,³⁵ as provided by NYSE Arca Equities Rule 5.3.
- (7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including securities deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance.
- (8) Under normal market conditions, substantially all of the Fund's assets will be invested in one or more S&P 500-related ETFs; ETFs that provide leveraged or inverse exposure to the S&P 500 Index; and, to seek the desired exposure to the S&P 500 Index, futures contracts. The Fund may also invest in Cash Instruments.
- (9) The Fund will limit its investment in futures contracts such that either (1) the aggregate net notional value of its futures investments will not exceed the value of the Fund's net assets, after taking into account unrealized profits and unrealized losses on the futures positions it has entered into; or (2) the aggregate initial margin and premiums required to establish positions in its futures investments will not exceed 5% of the Fund's net assets, after taking into account unrealized profits and unrealized losses on any such positions.
- (10) The Fund may invest up to 10% of its total assets in leveraged ETFs or inverse ETFs that seek to deliver multiples, or the inverse, of the performance of the S&P 500 Index, respectively. Such investments will be made in accordance with the

³⁵ 17 CFR 240.10A-3.

1940 Act and consistent with the Fund's investment objective and policies, and they will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or 3X) of any securities market index.

- (11) The Fund will not directly enter into swaps or engage in options transactions.
- (12) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line. In addition, the Portfolio Indicative Value³⁶ as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.³⁷ On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (“Disclosed Portfolio”) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.³⁸ The Administrator, through the

³⁶ According to the Exchange, the Portfolio Indicative Value will be calculated using the estimates of the value of the Fund’s NAV per Share using market data converted into U.S. dollars at the current currency rates. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio. The Portfolio Indicative Value will be based on quotes and closing prices from the securities’ local market and may not reflect events that occur subsequent to the local market’s close. Premiums and discounts between the Portfolio Indicative Value and the market price may occur. The Portfolio Indicative Value should not be viewed as a “real-time” update of the NAV per Share of the Fund, which is calculated once per day. All asset classes in which the Fund will invest will be included in the calculation of the Portfolio Indicative Value.

³⁷ According to the Exchange, several major market data vendors display or make widely available Portfolio Indicative Values published on CTA or other data feeds.

³⁸ The Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund’s website: ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities and financial instruments held in the Fund, and

National Securities Clearing Corporation (“NSCC”), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., E.T.), the list of the names and the required number of shares of each security, and amount of cash, to be delivered in exchange for a creation unit of the Fund. The NAV of the Fund will be calculated once each business day as of the regularly scheduled close of normal trading on the Exchange (normally, 4:00 p.m., Eastern Time).³⁹ Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the Fund investments will be readily available from the exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Quotation and last sale information for underlying U.S. exchange-traded equities, including the Underlying ETFs, will be available via the CTA high-speed line and from the national securities exchange on which they are listed. Quotations and last sale information for the Fund’s futures investments will be available from the futures exchange on which the futures are listed. Quotation information from brokers and dealers or pricing services will be available for Cash Instruments and non-exchange traded securities of money market mutual funds held by the Fund. Pricing information regarding each asset class in which the Fund will invest is generally available through nationally recognized data service providers through subscription

percentage weighting of the security and financial instrument in the Fund. The website information will be publicly available at no charge.

³⁹ The Fund will calculate NAV by: (i) taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders.

arrangements. The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,⁴⁰ and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in the Shares of a Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio. In addition, the Exchange states that neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer.⁴¹ The Exchange

⁴⁰ These reasons may include: (1) the extent to which trading is not occurring in the securities or financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

⁴¹ See supra note 11. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and the Sub-Adviser and their related personnel are subject to the

represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁴² The Exchange further represents that these procedures are adequate to properly monitor Exchange-trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,⁴³ Section 11A(a)(1)(C)(iii) of the Act,⁴⁴ and the rules and regulations thereunder applicable to a national securities exchange.

provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

⁴² The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

⁴³ 15 U.S.C. 78f(b)(5).

⁴⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁵ that the proposed rule change (SR-NYSEArca-2014-30), as modified by Amendment No. 1, be, and it hereby is, approved.⁴⁶

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Kevin M. O'Neill
Deputy Secretary

8011-01p

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⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

⁴⁷ 17 CFR 200.30-3(a)(12).